

APPENDIX A.

June 30,1982

Hmdn.81-1075

Appeals Court

DIANE DIPIERO vs.ALLEN GOODMAN &another

The plaintiff brought an action in tort against the defendant attorneys for legal malpractice.She alleged that the attorneys had represented herin divorce proceedings commenced about December 7,1970,and that they had negligently failed to obtain service on her husband in a manner which would provide her with an enforceable judgment of child support.She sought to recover from the defendants approximately ten years of unpaid child support payments as well as legal fees and expenses incurred

in the prosecution of the malpractice claim. At the conclusion of the plaintiff's case, the directed a verdict in the defendants' favor. Mass. R. Civ. P. 50(a), 365 Mass. 814 (1974). The plaintiff has appealed.

The plaintiff was required to present evidence sufficient to warrant jury findings that the defendants had failed to exercise reasonable care and skill in handling her case, see Caverly v. McOwen, 123 Mass. 574, 578 (1878); McLellan v. Fuller, 226 Mass. 374, 377-378 (1917); Glidden v. Terranova, Mass. App. Ct. Adv. Sh. (1981) 1831, 1832, that she incurred a loss, and that the defendants' malpractice was the

proximate cause of the loss, see McLellan v. Fuller, supra at 378; Nolan, Tort Law S 185 (1979). There was nothing in the testimony of the defendants or in their communications with the plaintiff which could have been found to constitute an admission of malpractice. Compare Republic Oil Corp. v. Danziger, Mass.

App.Ct.Adv.Sh. (1980) 425, 426. See Mallen v. Levit, Legal Malpractice S 663 (2d ed. 1981). Whether a reasonably competent lawyer would have proceeded differently under former Rule 41 of the Probate Courts (1959), or any statute which governed service in domestic relations cases in 1970, based on the sketchy information furnished by the plaintiff about her

husband's whereabouts in Africa, or the information that he was in Boston on some unspecified day in December, 1970, was not within the field of common knowledge possessed by a jury. As a consequence, the plaintiff was obliged to present expert testimony "to establish the standard of care owed by an attorney in the particular circumstances and the defendant(s') alleged departure from it ". Glidden v.

Terranova, supra. See Nolan, supras

186; Barry, Legal Malpractice

in Massachusetts, 63 Mass. L. Rev. 15, 117

(1978); Note, Expert Testimony in Legal

Malpractice Actions, 6 J. Legal Prof. 293

(1981). The plaintiff's expert appears to

have been qualified and presented principally as an expert on professional responsibility. He offered no testimony as to how the defendants should reasonably have proceeded on the facts available to them, nor did he express the view that the manner in which notice was given to the husband amounted to legal malpractice. In particular, he expressed no opinion that any act or omission of the defendants violated any of the three standards for determining competency set forth in Supreme Judicial Court Rule 3:22 (now redesignated Rule 3:07), DR 6-101, 359 Mass. 818 (1972). We assume that such an opinion could properly have been formulated on the plaintiff's

evidence, and if so, that it would have been sufficient in law to support a finding of malpractice, see Mallen & Levit, supra S 67; cf. Sullivan v. Birmingham, Mass. App.Ct. Adv.Sh. (1981) 326, 327-328, 335-336 (non-client plaintiff). The opinion which he did express, that the defendants should have advised the plaintiff of their feeling that service in the manner directed by the citation issued by the Probate Court provided a dubious basis for enforcing the child support order, was insufficient to establish negligence. Finally, there was no evidence which would warrant a jury in concluding that had the defendants perfected personal service on the

husband, the plaintiff would have succeeded in recovering payment of any of the amount ordered for child support. See McLellan v. Fuller, supra; Siano v. Martinelli, Mass. App.Ct. Adv. Sh. (1981) 1678; Hurd v. DiMento & Sullivan, 440 F. 2d 1322, 1323 (1st Cir.) cert. denied, 404 U.S. 862 (1971). The failure of proof on these necessary elements of the tort required the allowance of the defendants' motion.

Judgment affirmed.

APPENDIX B

COMMONWEALTH OF MASSACHUSETTS

Supreme Judicial Court for the Commonwealth
at Boston, September 30, 1982

ORDER

It is hereby Ordered, that the following
Applications for Further Appellate Review
be denied:

M-2320 DIANE DIPIERO

vs.

ALLEN GOODMAN & another

(Hampden Superior

No. 80-600; A.C.

No. 81-1075)

By the Court,

Patrick J. Hurley,

September 30, 1982

Clerk

APPENDIX C

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, ss.

SUPERIOR COURT

DEPARTMENT OF THE

TRIAL COURT

CIVIL ACTION

No. 80-600

Diane DiPiero, Plaintiff

vs.

Allen Goodman, Michael Rudy. Defendant(s)

JUDGMENT FOR DEFENDANT(S) AFTER RESCRIPT

This action was appealed to the Appeals Court, the issues having been duly heard and the Appeals Court having duly issued a rescript It is Ordered and Adjudged that the plaintiff Diane DiPiero take

nothing, that the action be dismissed on
the merits and that the defendant(s) Allen
Goodman, Michael Rudy recover of the
plaintiff Diane DiPiero no costs.

Dated at Springfield, this 13th day
of October, 1982.

Hampden County

Superior Court

Filed

OCT 13, 1982

Joseph P.

Edward G. Shea,

Zajac,

Clerk

Asst. Clerk

APPENDIX D

SUPREME COURT OF THE UNITED STATES

NOTICE OF APPEAL

Dated October 28, 1982

Diane DiPiero,

Appellant,

vs.

Allen Goodman and Michael Rudy,

Appellees.

Now comes the plaintiff, Diane DiPiero, in her complaint of Legal Malpractice against the defendants, Allen Goodman and Michael Rudy originating in Hampden County Superior Court No. 80-600 which granted defendants'

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FOR THE COMMONWEALTH
PATRICK J. MURLEY, CLERK

OCT 28 1982

motion for directed verdict and such action was affirmed by the Massachusetts Appeals Court No.81-1075 and Certiorari was denied by the Supreme Judicial Court of Massachusetts causing plaintiff's cause of action to be denied as of October 13,1982 and serves Notice of her Appeal to the Supreme Court of the United States stating her consitutional due process, and trial by jury rights have been violated.

FRANK R. SAIA, J.D.

55 State Street

Springfield, MA. 01103

(413) 736-3611

Counsel for

Diane DiPiero

Certificate of Service

On October 28, 1982 by mail postage prepaid service of the above Notice of Appeal has been made to the Massachusetts Supreme Judicial Court at New Court House, Pemberton Square, Boston, MA> and Attorney William Clancy, Counsel for the Defendants at Burns and Levinson, 50 Milk Street, Boston, MA. (617) 451-3300.